

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2077

Introduced by Assembly Member Allen

February 20, 2014

An act to amend Section 17510.2 of the Business and Professions Code, relating to charitable solicitations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2077, as amended, Allen. Charitable solicitations: commercial fundraisers.

The Supervision of Trustees and Fundraisers for Charitable Purposes Act requires a commercial fundraiser for charitable purposes, prior to soliciting any funds, assets, or property in California for charitable purposes, or prior to receiving and controlling any funds, assets, or property as a result of a solicitation in this state for charitable purposes, register with the Attorney General's Registry of Charitable Trusts. That act also requires a commercial fundraiser for charitable purposes to file with the Attorney General's Registry of Charitable Trusts a notice that sets forth specified information not less than 10 working days prior to the commencement of each solicitation campaign, event, or service.

This bill would instead require a commercial fundraiser for charitable purposes to file with the Attorney General's Registry of Charitable Trusts that notice not less than 15 working days prior to the commencement of each solicitation campaign, event, or service.

~~Existing law requires the solicitor or seller of a solicitation for charitable purposes to comply with specified requirements prior to making that solicitation. Existing law defines the term "solicitation for charitable purposes" to mean any request, plea, entreaty, demand, or~~

~~invitation, or attempt thereof, to give money or property, in connection with which, among other things, any statement is made to the effect that the gift or any part thereof will go to, or be used for, any charitable purpose or organization.~~

~~This bill would make a technical, nonsubstantive change to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12599 of the Government Code is
2 amended to read:

3 12599. (a) “Commercial fundraiser for charitable purposes”
4 means any individual, corporation, unincorporated association, or
5 other legal entity who for compensation does any of the following:

6 (1) Solicits funds, assets, or property in this state for charitable
7 purposes.

8 (2) As a result of a solicitation of funds, assets, or property in
9 this state for charitable purposes, receives or controls the funds,
10 assets, or property solicited for charitable purposes.

11 (3) Employs, procures, or engages any compensated person to
12 solicit, receive, or control funds, assets, or property for charitable
13 purposes.

14 A commercial fundraiser for charitable purposes shall include
15 any person, association of persons, corporation, or other entity that
16 obtains a majority of its inventory for sale by the purchase, receipt,
17 or control for resale to the general public, of salvageable personal
18 property solicited by an organization qualified to solicit donations
19 pursuant to Section 148.3 of the Welfare and Institutions Code.

20 A commercial fundraiser for charitable purposes shall not include
21 a “trustee” as defined in Section 12582 or 12583, a “charitable
22 corporation” as defined in Section 12582.1, or any employee
23 thereof. A commercial fundraiser for charitable purposes shall not
24 include an individual who is employed by or under the control of
25 a commercial fundraiser for charitable purposes registered with
26 the Attorney General. A commercial fundraiser for charitable
27 purposes shall not include any federally insured financial institution
28 that holds as a depository funds received as a result of a solicitation
29 for charitable purposes.

1 As used in this section, “charitable purposes” includes any
2 solicitation in which the name of any organization of law
3 enforcement personnel, firefighters, or other persons who protect
4 the public safety is used or referred to as an inducement for
5 transferring any funds, assets, or property, unless the only
6 expressed or implied purpose of the solicitation is for the sole
7 benefit of the actual active membership of the organization.

8 (b) A commercial fundraiser for charitable purposes shall, prior
9 to soliciting any funds, assets, or property, including salvageable
10 personal property, in California for charitable purposes, or prior
11 to receiving and controlling any funds, assets, or property,
12 including salvageable personal property, as a result of a solicitation
13 in this state for charitable purposes, register with the Attorney
14 General’s Registry of Charitable Trusts on a registration form
15 provided by the Attorney General. Renewals of registration shall
16 be filed with the Registry of Charitable Trusts by January 15 of
17 each calendar year in which the commercial fundraiser for
18 charitable purposes does business and shall be effective for one
19 year. A registration or renewal fee of two hundred dollars (\$200)
20 shall be required for registration of a commercial fundraiser for
21 charitable purposes, and shall be payable by certified or cashier’s
22 check to the Attorney General’s Registry of Charitable Trusts at
23 the time of registration or renewal. The Attorney General may
24 adjust the annual registration or renewal fee, or means of payment,
25 as needed pursuant to this section. The Attorney General’s Registry
26 of Charitable Trusts may grant extensions of time to file annual
27 registration as required, pursuant to subdivision (b) of Section
28 12586. No separate fee shall be charged by the Attorney General
29 for electronic registration, electronic renewal, or electronic
30 repayment of fees.

31 (c) A commercial fundraiser for charitable purposes shall file
32 with the Attorney General’s Registry of Charitable Trusts an annual
33 financial report on a form provided by the Attorney General,
34 accounting for all funds collected pursuant to any solicitation for
35 charitable purposes during the preceding calendar year. The annual
36 financial report shall be filed with the Attorney General’s Registry
37 of Charitable Trusts no later than 30 days after the close of the
38 preceding calendar year.

39 (d) The contents of the forms for annual registration and annual
40 financial reporting by commercial fundraisers for charitable

1 purposes shall be established by the Attorney General in a manner
2 consistent with the procedures set forth in subdivisions (a) and (b)
3 of Section 12586. The annual financial report shall require a
4 detailed, itemized accounting of funds, assets, or property, solicited
5 for charitable purposes on behalf of each charitable organization
6 exempt from taxation under Section 501(c)(3) of the Internal
7 Revenue Code or for each charitable purpose during the accounting
8 period, and shall include, among other data, the following
9 information for funds, assets, or property, solicited by the
10 commercial fundraiser for charitable purposes:

11 (1) Total revenue.

12 (2) The fee or commission charged by the commercial fundraiser
13 for charitable purposes.

14 (3) Salaries paid by the commercial fundraiser for charitable
15 purposes to its officers and employees.

16 (4) Fundraising expenses.

17 (5) Distributions to the identified charitable organization or
18 purpose.

19 (6) The names and addresses of any director, officer, or
20 employee of the commercial fundraiser for charitable purposes
21 who is a director, officer, or employee of any charitable
22 organization listed in the annual financial report.

23 (e) A commercial fundraiser for charitable purposes that obtains
24 a majority of its inventory for sale by the purchase, receipt, or
25 control for resale to the general public, of salvageable personal
26 property solicited by an organization qualified to solicit donations
27 pursuant to Section 148.3 of the Welfare and Institutions Code
28 shall file with the Attorney General's Registry of Charitable Trusts,
29 and not with the sheriff of any county, an annual financial report
30 on a form provided by the Attorney General that is separate and
31 distinct from forms filed by other commercial fundraisers for
32 charitable purposes pursuant to subdivisions (c) and (d).

33 (f) It shall be unlawful for any commercial fundraiser for
34 charitable purposes to solicit funds in this state for charitable
35 purposes unless the commercial fundraiser for charitable purposes
36 has complied with the registration or annual renewal and financial
37 reporting requirements of this article. Failure to comply with these
38 registration or annual renewal and financial reporting requirements
39 shall be grounds for injunction against solicitation in this state for
40 charitable purposes and other civil remedies provided by law.

1 (g) A commercial fundraiser for charitable purposes is a
2 constructive trustee for charitable purposes as to all funds collected
3 pursuant to solicitation for charitable purposes and shall account
4 to the Attorney General for all funds. A commercial fundraiser for
5 charitable purposes is subject to the Attorney General's supervision
6 and enforcement over charitable funds and assets to the same extent
7 as a trustee for charitable purposes under this article.

8 (h) Not less than ~~10~~ 15 working days prior to the commencement
9 of each solicitation campaign, event, or service, or not later than
10 commencement of solicitation for solicitations to aid victims of
11 emergency hardship or disasters, a commercial fundraiser for
12 charitable purposes shall file with the Attorney General's Registry
13 of Charitable Trusts a notice on a form prescribed by the Attorney
14 General that sets forth all of the following:

15 (1) The name, address, and telephone number of the commercial
16 fundraiser for charitable purposes.

17 (2) The name, address, and telephone number of the charitable
18 organization with whom the commercial fundraiser has contracted.

19 (3) The fundraising methods to be used.

20 (4) The projected dates when performance under the contract
21 will commence and terminate.

22 (5) The name, address, and telephone number of the person
23 responsible for directing and supervising the work of the
24 commercial fundraiser under the contract.

25 (i) There shall be a written contract between a commercial
26 fundraiser for charitable purposes and a charitable organization
27 for each solicitation campaign, event, or service, that shall be
28 signed by the authorized contracting officer for the commercial
29 fundraiser and by an official of the charitable organization who is
30 authorized to sign by the organization's governing body. The
31 contract shall be available for inspection by the Attorney General
32 and shall contain all of the following provisions:

33 (1) The legal name and address of the charitable organization
34 as registered with the Registry of Charitable Trusts, unless the
35 charitable organization is exempt from registration.

36 (2) A statement of the charitable purpose for which the
37 solicitation campaign, event, or service is being conducted.

38 (3) A statement of the respective obligations of the commercial
39 fundraiser and the charitable organization.

1 (4) If the commercial fundraiser is to be paid a fixed fee, a
2 statement of the fee to be paid to the commercial fundraiser and a
3 good faith estimate of what percentage the fee will constitute of
4 the total contributions received. The contract shall clearly disclose
5 the assumptions upon which the estimate is based, and the stated
6 assumptions shall be based upon all of the relevant facts known
7 to the commercial fundraiser regarding the solicitation to be
8 conducted by the commercial fundraiser.

9 (5) If a percentage fee is to be paid to the commercial fundraiser,
10 a statement of the percentage of the total contributions received
11 that will be remitted to or retained by the charitable organization,
12 or, if the solicitation involves the sale of goods or services or the
13 sale of admissions to a fundraising event, the percentage of the
14 purchase price that will be remitted to the charitable organization.
15 The stated percentage shall be calculated by subtracting from
16 contributions received and sales receipts not only the commercial
17 fundraiser's fee, but also any additional amounts that the charitable
18 organization is obligated to pay as fundraising costs.

19 (6) The effective and termination dates of the contract and the
20 date solicitation activity is to commence within the state.

21 (7) A provision that requires that each contribution in the control
22 or custody of the commercial fundraiser shall in its entirety and
23 within five working days of its receipt comply with either of the
24 following:

25 (A) Be deposited in an account at a bank or other federally
26 insured financial institution that is solely in the name of the
27 charitable organization and over which the charitable organization
28 has sole control of withdrawals.

29 (B) Be delivered to the charitable organization in person, by
30 United States express mail, or by another method of delivery
31 providing for overnight delivery.

32 (8) A statement that the charitable organization exercises control
33 and approval over the content and frequency of any solicitation.

34 (9) If the commercial fundraiser proposes to make any payment
35 in cash or in kind to any person or legal entity to secure any
36 person's attendance at, or sponsorship, approval, or endorsement
37 of, a charity fundraising event, the maximum dollar amount of
38 those payments shall be set forth in the contract. "Charity
39 fundraising event" means any gathering of persons, including, but
40 not limited to, a party, banquet, concert, or show, that is held for

1 the purpose or claimed purpose of raising funds for any charitable
2 purpose or organization.

3 (10) A provision that includes all of the following statements:

4 (A) The charitable organization has the right to cancel the
5 contract without cost, penalty, or liability for a period of 10 days
6 following the date on which the contract is executed.

7 (B) The charitable organization may cancel the contract by
8 serving a written notice of cancellation on the commercial
9 fundraiser.

10 (C) If mailed, service shall be by certified mail, return receipt
11 requested, and cancellation shall be deemed effective upon the
12 expiration of five calendar days from the date of mailing.

13 (D) Any funds collected after effective notice that the contract
14 has been canceled shall be deemed to be held in trust for the benefit
15 of the charitable organization without deduction for costs or
16 expenses of any nature.

17 (E) The charitable organization shall be entitled to recover all
18 funds collected after the date of cancellation.

19 (11) A provision that includes all of the following statements:

20 (A) Following the initial 10-day cancellation period, the
21 charitable organization may terminate the contract by giving 30
22 days' written notice.

23 (B) If mailed, service of the notice shall be by certified mail,
24 return receipt requested, and shall be deemed effective upon the
25 expiration of five calendar days from the date of mailing.

26 (C) In the event of termination under this subdivision, the
27 charitable organization shall be liable for services provided by the
28 commercial fundraiser up to 30 days after the effective service of
29 the notice.

30 (12) A provision that, following the initial 10-day cancellation
31 period, the charitable organization may terminate the contract at
32 any time upon written notice, without payment or compensation
33 of any kind to the commercial fundraiser, if the commercial
34 fundraiser or its agents, employees, or representatives do any of
35 the following:

36 (A) Make any material misrepresentations in the course of
37 solicitations or with respect to the charitable organization.

38 (B) Are found by the charitable organization to have been
39 convicted of a crime arising from the conduct of a solicitation for

1 a charitable organization or purpose punishable as a misdemeanor
2 or a felony.

3 (C) Otherwise conduct fundraising activities in a manner that
4 causes or could cause public disparagement of the charitable
5 organization's good name or good will.

6 (13) Any other information required by the regulations of the
7 Attorney General.

8 (j) It shall be unlawful for a commercial fundraiser for charitable
9 purposes to not disclose the percentage of total fundraising
10 expenses of the fundraiser upon receiving a written or oral request
11 from a person solicited for a contribution for a charitable purpose.
12 "Percentage of total fundraising expenses," as used in this section,
13 means the ratio of the total expenses of the fundraiser to the total
14 revenue received by the fundraiser for the charitable purpose for
15 which funds are being solicited, as reported on the most recent
16 financial report filed with the Attorney General's Registry of
17 Charitable Trusts. A commercial fundraiser shall disclose this
18 information in writing within five working days from receipt of a
19 request by mail or facsimile. A commercial fundraiser shall orally
20 disclose this information immediately upon a request made in
21 person or in a telephone conversation and shall follow this response
22 with a written disclosure within five working days. Failure to
23 comply with the requirements of this subdivision shall be grounds
24 for an injunction against solicitation in this state for charitable
25 purposes and other civil remedies provided by law.

26 (k) If the Attorney General issues a report to the public
27 containing information obtained from registration forms or
28 financial report forms filed by commercial fundraisers for
29 charitable purposes, there shall be a separate section concerning
30 commercial fundraisers for charitable purposes that obtain a
31 majority of their inventory for sale by the purchase, receipt, or
32 control for resale to the general public, of salvageable personal
33 property solicited by an organization qualified to solicit donations
34 pursuant to Section 148.3 of the Welfare and Institutions Code.
35 The report shall include an explanation of the distinctions between
36 these thrift store operations and other types of commercial
37 fundraising.

38 (l) No person may act as a commercial fundraiser for charitable
39 purposes if that person, any officer or director of that person's
40 business, any person with a controlling interest in the business, or

1 any person the commercial fundraiser employs, engages, or
2 procures to solicit for compensation, has been convicted by a court
3 of any state or the United States of a crime arising from the conduct
4 of a solicitation for a charitable organization or purpose punishable
5 as a misdemeanor or felony.

6 (m) A commercial fundraiser for charitable purposes shall not
7 solicit in the state on behalf of a charitable organization unless that
8 charitable organization is registered or is exempt from registration
9 with the Attorney General's Registry of Charitable Trusts.

10 (n) If any provision of this section or the application thereof to
11 any person or circumstances is held invalid, that invalidity shall
12 not affect any other provision or application of this section that
13 can be given effect without the invalid provision or application,
14 and to this end the provisions of this section are severable.

15 ~~SECTION 1. Section 17510.2 of the Business and Professions~~
16 ~~Code is amended to read:~~

17 ~~17510.2. (a) As used in this article, "solicitation for charitable~~
18 ~~purposes," means any request, plea, entreaty, demand, or invitation,~~
19 ~~or attempt thereof, to give money or property, in connection with~~
20 ~~which any of the following applies:~~

21 ~~(1) Any appeal is made for charitable purposes.~~

22 ~~(2) The name of any charity, philanthropic or charitable~~
23 ~~organization is used or referred to in any such appeal as an~~
24 ~~inducement for making any such gift.~~

25 ~~(3) Any statement is made to the effect that the gift or any part~~
26 ~~thereof will go to or be used for any charitable purpose or~~
27 ~~organization.~~

28 ~~(4) The name of any organization of law enforcement personnel,~~
29 ~~firefighters, or any other persons who protect the public safety is~~
30 ~~used or referred to as an inducement for transferring any money~~
31 ~~or property, unless the only expressed or implied purpose of the~~
32 ~~solicitation is for the sole benefit of the actual active membership~~
33 ~~of the organization.~~

34 ~~(b) As used in this article, "sales solicitation for charitable~~
35 ~~purposes" means the sale of, offer to sell, or attempt to sell any~~
36 ~~advertisement, advertising space, book, card, chance, coupon~~
37 ~~device, magazine subscription, membership, merchandise, ticket~~
38 ~~of admission or any other thing or service in connection with which~~
39 ~~any of the following applies:~~

40 ~~(1) Any appeal is made for charitable purposes.~~

1 ~~(2) The name of any charity, philanthropic or charitable~~
2 ~~organization is used or referred to in any such appeal as an~~
3 ~~inducement for making any such sale.~~

4 ~~(3) Any statement is made to the effect that the whole or any~~
5 ~~part of the proceeds from the sale will go to or be used for any~~
6 ~~charitable purpose or organization.~~

7 ~~(4) The name of any organization of law enforcement personnel,~~
8 ~~firefighters, or other persons who protect the public safety is used~~
9 ~~or referred to as an inducement for transferring any money or~~
10 ~~property, unless the only expressed or implied purpose of the sales~~
11 ~~solicitation is for the sole benefit of the actual active membership~~
12 ~~of the organization.~~

13 ~~(e) A solicitation for charitable purposes, or a sale, offer or~~
14 ~~attempt to sell for charitable purposes, shall include the making~~
15 ~~or disseminating or causing to be made or disseminated before the~~
16 ~~public in this state, in any newspaper or other publication, or any~~
17 ~~advertising device, or by public outcry or proclamation, or in any~~
18 ~~other manner or means whatsoever any such solicitation.~~

19 ~~(d) For purposes of this article, "charity" shall include any~~
20 ~~person who, or any nonprofit community organization, fraternal,~~
21 ~~benevolent, educational, philanthropic, or service organization, or~~
22 ~~governmental employee organization which, solicits or obtains~~
23 ~~contributions solicited from the public for charitable purposes or~~
24 ~~holds any assets for charitable purposes.~~